

THE AMHERST ALLIANCE
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March 26, 2002

Secretary
Federal Communications Commission
The Portals
Washington, DC 20554

RE: Motion For Acceptance Of Reply Comments "Not Timely Filed"
In FCC Docket MM 99-325 (Mandatory IBOC Digitalization)

Dear FCC:

Please waive the Reply Comments deadline in FCC Docket MM 99-325, by 3 workdays, in order to permit the acceptance of these Additional Reply Comments by THE AMHERST ALLIANCE -- even though they were "not timely filed".

Our Additional Reply Comments were, in fact, ready for filing on the evening of Thursday, March 21. In fact, we made several attempts to file them. However, we were unable to obtain the necessary access to the Electronic Comment Filing System (ECFS) at the FCC's Web Site (www.fcc.gov).

Web Site access problems, compounded by problems with our own computer, have continued to block filing of our Additional Reply Comments until today. Now that we are finally in a position to file them, we ask you to accept these Additional Reply Comments as part of the official record in FCC Docket MM 99-325.

We stress that our failure to file this document earlier was the result of technological difficulties. It was not the result of lack of diligence on our part, nor was it the result of a failure to take the Commission's filing deadlines seriously.

Respectfully,

Don Schellhardt
Attorney for THE AMHERST ALLIANCE

UNITED STATES OF AMERICA
Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In The Matter Of:

Digital Audio Broadcasting Systems
And Their Impact On The
Terrestrial Radio Broadcast Service

FCC Docket No. MM 99-325

ADDITIONAL REPLY COMMENTS OF THE AMHERST ALLIANCE

THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group. We were founded in 1998 -- at a meeting in Amherst, Massachusetts -- in order to promote Low Power Radio in particular and a more open mass media in general.

THE AMHERST ALLIANCE has filed Written Comments on several occasions regarding the contemplated mandate, in FCC Docket MM 99-325, for IBOC (In Band On Channel) Digitalization. More recently, we filed Reply Comments in this Docket, endorsing the endorsement of Eureka-147 Digitalization technology in Written Comments filed by THE VIRGINIA CENTER FOR THE PUBLIC PRESS.

We are filing these *Additional* Reply Comments in order to address two additional points which have only now come to our attention.

Need To Consider The Documents In FCC Docket MM 00-221

In the internal deliberations on our endorsement of the endorsement of Eureka-147 technology by the VIRGINIA CENTER FOR THE PUBLIC PRESS, we were of course aware that the FCC's primary rationale for investigating IBOC technology first was the desire to avoid pre-empting exclusive use of the "L Band" by the American military.

We have just learned, however, that *the Federal Communications Commission itself* has recently voted for partial pre-emption of the “L Band” in order to accommodate certain wireless transmissions. That decision was made in a December 21, 2001 Report & Order and Memorandum Opinion & Order in FCC Docket 00-221.

THE AMHERST ALLIANCE hereby joins VIRGINIA CENTER FOR THE PUBLIC PRESS in incorporating by reference all of the documents filed in FCC Docket 00-221, and related consolidated Dockets, notably including the text of the FCC’s own Report & Order and Memorandum Opinion & Order, on December 21, 2001.

The documents in Docket 00-221 must be carefully assessed before the Commission makes any firm decisions in the current, directly related Docket.

Now that *the Federal Communications Commission itself* has determined that exclusive use of the “L Band” by the American military is apparently not necessary for national security, there is nothing left of the Commission’s original *core justification* for prioritizing research, testing and evaluation regarding IBOC technology over research, testing and evaluation regarding Eureka-147 technology.

Need To Consider The Documents In FCC Docket MM 00-47

Another argument against Eureka-147 has also been answered by the passage of time. The advent of software designed radio, which is the focus of FCC Docket MM 00-47, has resolved some of the earlier technical limitations of Eureka-147 technology.

In this regard, we hereby incorporate by reference all of the documents which have been filed in FCC Docket MM 00-47, including the text of the Commission's Report & Order on September 14, 2001.

The potential improvement of Eureka-147 technology, due to the development of software designed radio, deserves careful assessment and consideration before the FCC makes a final selection of *either one* of the two competing Digitalization technologies.

Need For Full Testing And Evaluation Of Eureka-147 Technology

We submit that the demise of the Commission's original reasons for rejecting Eureka-147 justifies a return to Square One. While there is a need for additional research, testing and evaluation of the IBOC Digitalization technology, if indeed it is "still in the running", it is also time to begin a comparable process of research, testing and evaluation for the Eureka-147 Digitalization alternative.

In no event should IBOC Digitalization be mandated until and unless the competing Eureka-147 technology has been researched, tested and evaluated at least as thoroughly as the IBOC Digitalization technology has been.

If the Federal Communications Commission is willing to give as much weight to the views of actual radio listeners, and of potentially threatened small broadcasters, as it assigns to the views of those with a direct financial stake in mandatory implementation of the IBOC technology, *then* the Commission's next course of action should be obvious.

Misrepresentation Of Our Proposal By NATIONAL PUBLIC RADIO

We have just read the Reply Comments filed in this Docket by NATIONAL PUBLIC RADIO. While we commend NPR for at least “flashing a yellow light” regarding the corporate campaign for “a rush to judgment” on IBOC Digitalization, we are concerned that NPR’s Reply Comments embody a misunderstanding and/or misrepresentation of a proposal presented in Amherst’s most recent Written Comments in this Docket.

Specifically, NPR states THE AMHERST ALLIANCE has proposed that, in the event of a shift to IBOC Digitalization, each proposed IBOC facility should have to obtain case-by-case permission from local Low Power FM stations before that IBOC facility can obtain a license to broadcast.

However, THE AMHERST ALLIANCE has *not* stated that future IBOC facilities, if there are any, should require case-by-case permission from local Low Power FM stations. Instead, we have stated in our recent Written Comments that each proposed IBOC facility should have to obtain case-by-case permission *from the Federal Communications Commission*, based on *Commission-supervised testing* to assess the possibility of major interference

Further, we have never said or implied that the interference assessment for each proposed IBOC facility should only consider the impact on Low Power FM stations.

Instead, we stated in our Written Comments that the interference testing should assess the possible impact on *all* stations with current or pending licenses.

Also: We added that corrective action should be taken, at the expense of the IBOC facility's owner(s), if *any* rival station would be significantly harmed in the absence of such corrective action.

Finally, NPR alleges that *some* Low Power FM advocates have said, in documents filed in FCC Docket MM 99-25, that IBOC Digitalization would not pose a risk of interference to Low Power FM stations.

Of course, we do not know the context from which the quotes cited by NPR were drawn. Even if the quotes are totally accurate, they were *not* made by THE AMHERST ALLIANCES or any of Amherst's traditional allies, such as AMERICANS FOR RADIO DIVERSITY and VIRGINIA CENTER FOR THE PUBLIC PRESS.

Instead, the quotes come from filings by groups such as MEDIA ACCESS PROJECT, which entered the Low Power FM debate late in the day and have *never* represented the constituencies served by Amherst and/or its usual allies.

THE AMHERST ALLIANCE has *never* said, or implied, that IBOC Digitalization poses no risk of interference with Low Power FM stations. Instead, although we have only recently moved to an outright endorsement of Eureka-147 Digitalization over IBOC Digitalization, we have *always* expressed concern about the possible impact of IBOC Digitalization upon a Low Power Radio Service.

Expressions of this concern can be traced back to our very first Written Comments in FCC Docket MM 99-325, filed in December of 1999.

CONCLUSION

For the reasons expressed herein, we continue to urge the Commission to reject mandatory IBOC Digitalization and fully investigate the Eureka-147 alternative.

Respectfully submitted,

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Dated: March 21, 2002

A copy of these Additional Reply Comments has been mailed to every party who sent a copy of their Reply Comments to us.